

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

VIRGILIO SANCHEZ	:	
Plaintiff,	:	
	:	CIVIL ACTION
	:	
v.	:	NO. 99-0220
	:	
ANN MARIE COYLE, D.A.,	:	
CARLOS PEREZ, DETECTIVE, AND	:	
GEORGE PIRRONE, DETECTIVE	:	
	:	
Defendants.	:	

GREEN, S.J.

JUNE 22, 1999

MEMORANDUM - ORDER

Presently before the Court are two motions to dismiss Plaintiff, Virgilio Sanchez's pro se complaint pursuant to Fed.R.Civ. P. 12(b)(6). Also before the Court is pro se Plaintiff Sanchez's Request for Appointment of Counsel. For the reasons that follow, the motions to dismiss will be granted and the request for appointment of counsel will be denied.

I. FACTUAL AND PROCEDURAL HISTORY

On November 20, 1996, police arrested Virgilio Sanchez, a.k.a. Robert Molino, for various crimes, including murder. State Prosecutors charged him with first degree murder and possession of an instrument of crime and a jury convicted him of both charges on October 28, 1997. Mr. Sanchez was subsequently sentenced to a term of life imprisonment and is currently serving that sentence in a state prison.

On February 5, 1999, Mr. Sanchez filed a pro se cause of action pursuant to 42 U.S.C. §1983, alleging that Detectives Carlos Perez and George Pirrone

“menaced and forced to the Inmate Felix Gomez and he was obligated, at the Homicide Division, to signed a false statement and accused me of the assassinated [sic] of Santos Alvarado.” (Pl.’s Compl. at 4). The pro se complaint further alleges that “the D.A. Ann Marie Coyle, menaced to he, before the Jurys and the Judge of ‘Perjury,’ when he denied the accusation.” Id. In bringing this section 1983 suit, Sanchez seeks relief in the form of release from custody and monetary damages.

Detectives Carlos Perez and George Pirrone filed a Motion to Dismiss the plaintiff’s pro se complaint on March 11, 1996. Defendant Assistant District Attorney Anne Marie Coyle filed a separate motion on April 6, 1999. Although Mr. Sanchez has not formally opposed the Motions to Dismiss, he has submitted various documents to the Court in connection with this suit. These documents include affidavits from witnesses, state criminal trial transcripts, letters from attorneys apparently representing him in state matters, and various other documents. Defendants, however, make no reference to these additional matters in their submissions to this court. Therefore, the court will not consider the plaintiff’s additional submissions and thereby limits its consideration of the motions before it to the face of the pleadings.

II. DISCUSSION

A. LEGAL STANDARD

Dismissal of an action pursuant to Fed. R. Civ. P. 12(b)(6) is appropriate where it is certain that no relief could be granted under any set of proven facts. Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990). Granting a 12(b)(6) motion determines the merits at an early stage of a plaintiff's case. Therefore,

the court must accept as true all of the allegations in the pleadings and must give the plaintiff the benefit of every favorable inference that may be drawn from those allegations. Schrob v. Catterson, 948 F.2d 1402, 1405 (3d Cir.1991). Simply put, the complaint will withstand a Fed.R.Civ.P. 12(b)(6) attack if the material facts as alleged, in addition to inferences drawn from those allegations, provide a basis for recovery. See Menkowitz v. Pottstown Mem'l Med. Ctr., 154 F.3d 113, 125 (3d. Cir 1998).

The legal standard for deciding a 12(b)(6) motion is somewhat modified when the complaint at issue has been filed by a pro se plaintiff. Specifically, pro se prisoner complaints "however inartfully pleaded" are held to "less stringent standards than formal pleadings drafted by lawyers." See Jubilee v. Horn, 959 F. Supp. 276, 278 (E.D.Pa. 1997). Thus, a pro se action "can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " See Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 292 (1976).

The pro se complaint in the instant matter alleges that Detectives Perez and Pirrone violated the plaintiff's constitutional rights by forcing Felix Gomez to offer perjurious testimony during the plaintiff's state criminal trial. The complaint further alleges that Assistant District Attorney Coyle ("A.D.A. Coyle") also violated the plaintiff's constitutional rights by subsequently presenting Felix Gomez's allegedly false testimony to the judge and jury in the state proceedings. Because Virgilio Sanchez is currently serving a sentence related to the state court conviction at issue in this case, on motion to dismiss, the Court must decide two issues: (1) whether a state prisoner may challenge the constitutionality of his state conviction in a suit for damages pursuant to

42 U.S.C. § 1983; and (2) whether a state prisoner may obtain release from imprisonment in a damages action brought pursuant section 1983.

B. THE PLAINTIFF'S CLAIMS UNDER 42 U.S.C. §1983.

Virgilio Sanchez brings this section 1983 cause of action alleging that defendant police officers and A.D.A. Coyle violated his constitutional rights by procuring and presenting false testimony at his state criminal trial. In his complaint, Mr. Sanchez asserts that the presentation of this false testimony before the judge and jury in the criminal case caused him to be convicted and imprisoned for crimes he did not commit. He is currently serving a state prison sentence resulting from the state convictions and seeks damages and release from custody as remedies for his constitutional injuries.

1. Whether a State Prisoner May Challenge the Constitutionality of His State Conviction in a Suit for Damages Pursuant to 42 U.S.C. § 1983.

State prisoners seeking access to the federal courts for claims of unconstitutional treatment at the hands of state officials may bring their claims pursuant to the Civil Rights Act, 42 U.S.C. § 1983,¹ or the federal habeas corpus statute, 28 U.S.C. § 2254.² While both statutes provide the state prisoner with access to a federal

¹ Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen . . . or other person . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. §1983.

² Title 28 U.S.C. § 2254(b) provides:

An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or

forum, they differ in scope and operation.

When a state prisoner seeks relief for conditions of his imprisonment, he may bring suit pursuant to section 1983. Preiser v. Rodriguez, 411 U.S. 475, 494, 93 S.Ct. 1827, 1838 (1973). If, however, the state prisoner seeks to invalidate his state conviction, or otherwise obtain immediate or speedier release from prison, he must bring his claims pursuant to the federal habeas corpus statute. Id. In Preiser v. Rodriguez, 411 U.S. 475, 93 S.Ct. 1827, the Supreme Court clearly established that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody and that the traditional function of the writ is to secure release from illegal custody. Id. at 484, 93 S.Ct. at 1832. Because habeas corpus is the exclusive remedy available to attack a prisoner's current confinement, a state prisoner may not invalidate his conviction by any other means. Id.

While the holding in Preiser clearly established the function of the habeas statute, it did not address whether claims for damages that may imply the invalidity of a state conviction should be brought under 28 U.S.C. § 2254 or 42 U.S.C. § 1983. The Supreme Court subsequently addressed this issue in Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364 (1994). In Heck, the Court clearly established that a state prisoner could not maintain an action for damages under section 1983 on the basis of events leading to a conviction which has not been reversed or impaired by other official

that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.
28 U.S.C. § 2254(b).

proceedings if a judgment in favor of the plaintiff in the civil case would imply that the conviction was invalid. Id. at 486-7, 114 S.Ct. at 2372.

Following the rule articulated in Heck, the Court finds that Mr. Sanchez's claims for damages are not cognizable under section 1983. If Mr. Sanchez successfully proved that the defendants violated his constitutional rights by procuring and presenting false testimony at the state criminal trial that led to his state conviction and current confinement, his section 1983 claim would effectively call his state court conviction into question. Heck clearly established that a state prisoner may not invalidate his state court conviction in a section 1983 suit for damages while he is serving a sentence for that conviction. The proper mechanism for a state prisoner to obtain invalidation of a conviction lies within the federal habeas corpus statute. Thus, the defendants motions to dismiss Mr. Sanchez's section 1983 claims for damages will be granted.

2. Whether a State Prisoner May Obtain Release from Imprisonment in a Damages Action Brought Pursuant Section 1983.

In addition to his claim for damages pursuant to section 1983, Mr. Sanchez also seeks immediate release from imprisonment. The form of relief Mr. Sanchez seeks, however, is not available under section 1983. See Heck at 485, 114 S.Ct. at 2372. Rather, the remedy of release from confinement is only available via petition for a writ of habeas corpus. Id.

In a different context, it has been stated that a court may exercise a measure of tolerance toward the pro se plaintiff who mistakenly casts his claims of unconstitutional treatment at the hands of state officials under an inappropriate statute. See Royce v.

Hahn, 151 F.3d 116, 118 (3d. Cir 1998). If the court so chooses, it may, in fact, convert what appears to be a civil rights action, brought pursuant to section 1983, into a habeas corpus action and vice versa, if appropriate. Id. In this case, however, no measure of judicial tolerance will aid Mr. Sanchez because he cannot avoid the exhaustion of state judicial remedy requirements of the federal habeas corpus statute by characterizing his suit as a civil rights complaint. Id. Therefore, even if Mr. Sanchez's complaint is treated as a petition for habeas corpus, pursuant to 28 U.S.C. § 2254, he is not entitled to relief as a matter of law because he has not alleged that he has exhausted his state court remedies.

Consequently, the plaintiff is not entitled to the relief he seeks under 28 U.S.C. § 2254 or 42 U.S.C. § 1983 and the defendants' motions to dismiss will be granted.

**C. ABSOLUTE IMMUNITY PRECLUDES PLAINTIFF'S SUIT
AGAINST A.D.A. COYLE.**

Prosecutors are subject to varying levels of official immunity. Absolute immunity attaches to all actions performed in a "quasi- judicial" role. Imbler v. Pachtman, 424 U.S. 409, 430, 96 S.Ct. 984, 994- 95 (1976). This includes activity taken while in court, such as the presentation of evidence or legal argument, as well as selected out-of-court behavior "intimately associated with the judicial phases" of litigation. See Rose v. Bartle, 871 F.2d 331, 343 (3d. Cir. 1989). The decision to initiate a prosecution is at the core of a prosecutor's role as an advocate for the state. Imbler, 424 U.S. at 430-31, 96 S.Ct. at 994-96. Therefore, a prosecutor is absolutely immune when carrying out duties associated with prosecution of a case, even where he or she acts without a good faith belief that any wrongdoing has occurred. See Rose v. Bartle, 871 F.2d at 347 n.12 (3d

Cir. 1989).

In the instant case, Virgilio Sanchez brings section 1983 claims against A.D.A. Anne Marie Coyle alleging that she presented a witness' false testimony at his state criminal trial. Imbler clearly establishes that a state prosecutor enjoys absolute immunity from a civil suit for damages under section 1983 for the initiation and pursuit of a criminal prosecution, including presentation of the state's case at trial. Therefore, the actions taken by A.D.A. Coyle while presenting testimony at Mr. Sanchez's criminal trial are also subject to absolute immunity.

D. Request for Appointment of Counsel

The plaintiff requested appointment of counsel to assist him in this case. As the Court has determined that his section 1983 claims are not cognizable against any of the defendants named in the cause of action, his request for appointment of counsel will be denied.

III. CONCLUSION

For the foregoing reasons the Defendants' Motions to Dismiss will be granted without prejudice and Plaintiff's Request for Appointment of Counsel will be denied. An appropriate order follows.

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CARLOS PEREZ, DETECTIVE, AND	:	
GEORGE PIRRONE, DETECTIVE	:	
	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 22nd day of June 1999, upon consideration of Defendants' Perez, Pirrone, and Coyle's Motions to Dismiss pursuant to 12(b)(6) IT IS HEREBY ORDERED that the Plaintiff's complaint is DISMISSED in its entirety WITHOUT

PREJUDICE.

IT IS FURTHER ORDERED that Plaintiff, Virgilio Sanchez's Request for Appointment of Counsel is DENIED.

BY THE COURT,

CLIFFORD SCOTT GREEN, S.J.